AO 91 (Rev. 11/11) Criminal Complaint

UNITED STATES DISTRICT COURT

for the

District of New Mexico

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

MAR 25 2015

MATTHEW J. DYKMAN
CLERK

United States of America
v.

Elijah Shirley, Maynard Shirley and Michael Shirley
Defendant(s)

Case No. 15-MJ-993

AMENDED
CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of 03/21/2015 in the county of San Juan in the District of New Mexico, the defendant(s) violated:

Code Section	*Offense Description*
Title 18, U.S.C., Section 1111	Murder
Title 18, U.S.C., Section 2(a)	Aiding and Abetting
Title 18, U.S.C., Section 1153	Crimes Committed within Indian Country
Title 18, U.S.C., Section 113(a)(6)	Assault Resulting in Seriously Bodily Injury

This criminal complaint is based on these facts:
See Attached Affidavit hereby incorporated by reference as if fully restated herein.

☒ Continued on the attached sheet.

Complainant's signature

Cary S. Cahoon, FBI Special Agent
Printed name and title

Sworn to before me and signed in my presence.

Date: 03/25/2015

Judge's signature

City and state: Farmington, New Mexico

B. Paul Briones, U.S. Magistrate Judge
Printed name and title

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

AFFIDAVIT

I, Cary Cahoon, being duly sworn, hereby depose and say:

1. I am a Special Agent (SA) with the United States Department of Justice, Federal Bureau of Investigation (FBI), and have been employed as such since 1999. I am currently assigned to the Albuquerque Division of the FBI, Farmington Resident Agency, and have primary investigative responsibility in crimes that occur in Indian Country, including violent crimes such as homicide, robbery, arson, aggravated assault, and sexual assault. I am also responsible for investigating all other federal crimes for which the FBI investigates in the San Juan County area of New Mexico. The information set forth in this affidavit has been derived from an investigation conducted by affiant, Shiprock Criminal Investigator Jefferson Joe (Navajo Department of Criminal Investigations), and/or communicated to me by other law enforcement officers and witnesses.

2. On 03/21/2015, at approximately 2:44 a.m., an individual (Hereinafter referenced as Jane Doe 1) contacted 911 Dispatch and advised that her brother (Hereinafter referenced as Victim 1) and father (Hereinafter referenced as Victim 2) had been stabbed at their residence (single wide trailer) in Fruitland, New Mexico (Residence is located within the exterior boundaries of the Navajo Nation Indian Reservation), and there was a lot of blood. Jane Doe 1 further advised that the unknown suspects left the residence.

3. At approximately 2:50 a.m., Navajo Nation Police Officer Kurtis Halkani (Kayenta Police District) was dispatched to said location, along with Navajo Nation Police Officer Jo

Donna Salt (Kayenta Police District). Both officers were covering for the Shiprock Police District at the time they were dispatched.

4. At approximately 3:06 a.m., a relative of the aforementioned victims contacted the Shiprock Police Department and reported that someone had broken into said residence, beat up Victim 1, and that Victim 1 was not breathing.

5. At approximately 3:09 a.m., Officer Halkani arrived on scene at said residence. Shortly thereafter, Officer Salt arrived and provided security outside the residence. Just outside the residence Officer Halkani observed what looked like blood on the floor of the wooden deck and on the front door. Upon entering the residence Officer Halkani observed Victim 1 (Native American Male) lying on the ground near the front door wearing blue boxers and socks soaked in a red liquid substance like blood. Victim 1 was covered in what appeared to be blood and an individual (Hereinafter referenced as Jane Doe 2) was on the ground holding Victim 1 in her arms. Jane Doe 2 was crying and extremely distraught. Officer Halkani checked Victim 1's neck (carotid artery) for a pulse but there was not one. Officer Halkani noticed Victim 1 had a large injury that looked like a stab wound on his left upper chest area. Officer Halkani also observed Victim 2 (Native American Male) bent over sitting on the couch in the living room. When Officer Halkani saw that Victim 2 had multiple stab wounds and was covered in what appeared to be blood he contacted Emergency Medical Services (EMS) and requested their assistance. Officer Halkani also observed a significant amount of what appeared to be blood on the floor and walls of the hallway which leads to two (2) separate bedrooms on the west end of the residence.

6. Officer Halkani was told by one of the female individuals (Hereinafter referenced as Jane Doe 3) living at the residence that three unknown males broke into the residence and

that they were fighting with Victim 1 in the hallway. Jane Doe 3 said that at some point one of the unknown males exited the front door of the residence, retrieved a gun that he/she described as being approximately 24 inches in length, and then she heard a gunshot. Jane Doe 3 also said one of the three unknown males had a knife, which she described as being banana-shaped like a machete. When Victim 1 collapsed to the ground the three unknown males left the residence and departed in an unknown vehicle. Jane Doe 3 told Officer Halkani that Jane Doe 2 knows the three unknown males.

7. When Officer Halkani questioned Jane Doe 2 about the three unknown males she identified them as being Leander Shirley (Later identified as Maynard Shirley), Elijah Shirley, and Michael Shirley, and said they were brothers. Jane Doe 2 told Officer Halkani that she used to be in a relationship with one of the brothers and that the three brothers live in Kirtland, New Mexico, and drive a white BMW. Jane Doe 2 also stated that she has been in a relationship with Victim 1 for one month.

8. In a subsequent interview with Jane Doe 2 she advised that Maynard Shirley, Elijah Shirley and Michael Shirley are brothers and are definitely the ones who broke into said residence and killed Victim 1. At the time the brothers broke into said residence Victim 1 and Jane Doe 2 were sleeping together in the bedroom on the far west side of the trailer. When they broke into said residence, Victim 1 got out of bed and exited the bedroom. Jane Doe 2 then heard people fighting so she went out to see what was going on. When she exited the bedroom she observed the three brothers fighting Victim 1 in the hallway. Jane Doe 2 told the brothers to leave and tried to push them off of Victim 1, but they threw her against the wall and kept pushing her off. Jane Doe 2 believed she saw Elijah holding something in his hand as he was fighting Victim 1, but she could not see what it was he was holding. Jane Doe 2 did not know who it was that stabbed Victim 1, but believed it was Elijah. Elijah and Victim

1 are good friends and have known each other for many years, however, Jane Doe 2 has been in a relationship with Victim 1 for a month and has been living with Victim 1 for about two weeks. Prior to being with Victim 1, Jane Doe 2 had been in a relationship with Elijah for more than 10 years. For some of that time Jane Doe 2 was with Elijah, to include recently, she lived with the Shirley's at their residence in Kirtland. Jane Doe 2 described Elijah as "tough" and a "bully." Jane Doe 2 said Maynard was in prison for a long time and that she is scared of him.

9. At approximately 3:38 a.m., Victim 2 arrived by ambulance at the San Juan Regional Medical Center (SJRMC) for injuries he sustained at his residence during the above-referenced incident trying to protect Victim 1. Victim 2 had a collapsed lung and multiple stab wounds for which he is still being treated.

10. In an interview of Victim 2 he advised that he was sleeping in the bedroom next to where Victim 1 and Jane Doe 2 were sleeping when he heard loud noises and commotion in the living room area. When Victim 2 exited his bedroom to see what was going on, he observed "Hogy" (ph), who is Elijah Shirley, and Victim 1 fighting in the living room area. As Victim 2 walked down the hallway toward the living room a Native American Male whom he did not know attacked him with a knife and started stabbing him. Victim 2 described the stabber as being a "little guy." Victim 2 said the stabber was smaller than himself (Victim 2 said he is 5"8" in height). The stabber had a medium build, looked fit and in shape, and had short hair like a "marine" haircut. Victim 2 believed the stabber was wearing blue jeans, a white tank top, and some kind of necklace. Victim 2 said the knife the stabber had was in the shape of a banana and that the stabber was holding it in his right hand. At one point Jane Doe 2 stepped between the stabber and Victim 2 and told the stabber to stop and to leave. Victim 2 said the stabber then stopped.

Victim 2 never saw the third person and believed he was outside the residence during the above-referenced incident. Victim 2 knows Elijah, as Elijah and Victim 1 went to school together and have been friends for a long time. During the above incident, Victim 2 heard a gunshot and thought Victim 1 had been shot. The gunshot sounded like the same gunshot that Victim 2 heard when he and Victim 1 were at Elijah's house on Monday and Elijah showed them a flare gun he recently purchased and he was shooting it for them. The reason Victim 1 and 2 were at Elijah's house was because Victim 1 and 2 gave Elijah a ride home from the Zia Liquor Store near Kirtland. Victim 2 described the round from the flare gun like a shotgun shell with some kind of dough inside the shell rather than pellets.

11. On March 22, 2015, an individual (Hereinafter referenced as Jane Doe 4) told affiant and CI Joe that she kept receiving text messages all week (Week of March 15, 2015) from Elijah asking where Jane Doe 2 was. Jane Doe 4 ignored and did not respond to Elijah's text messages. Sometime around 12:30 a.m., on March 21, 2015, Jane Doe 4 was at the Northern Edge Casino gambling and drinking alcohol when she called Elijah and spoke to him over the phone. Jane Doe 4 decided to call Elijah because she was sick of him continuing to text her about the whereabouts of Jane Doe 2, but at that the same time, she also felt bad she had not told him where Jane Doe 2 was, as they (Jane Doe 2 and Elijah) had been together for such a long time. When Jane Doe 4 told Elijah that Jane Doe 2 was staying with Victim 1 at Victim 1's residence and that Elijah needed to leave Jane Doe 2 alone and let her move on with her life, Elijah then told Jane Doe 4 that he was going to go and kick Victim 1's ass. This reported conversation occurred approximately two hours before Victim 1 was killed. Jane Doe 4 told a family member that Elijah said he was going to kill Victim 1, but when Jane Doe 4 was interviewed she did not recall if Elijah said he was going to kill Victim 1 or not. Jane Doe 4 told affiant and CI Joe that

Jane Doe 2 left Elijah because he hit and choked her and that she did not want to go back to him, as she was afraid of him.

12. On March 22, 2015, Jane Doe 3 was interviewed and advised that she was at said residence when the three unknown males broke in and killed Victim 1 and seriously injured Victim 2. At the time, Jane Doe 3 was asleep in the bedroom on the far east end of the trailer and Jane Doe 1 was with her in the same bedroom. When Jane Doe 3 heard yelling and noises, she exited the bedroom and went into the kitchen area. While in the kitchen area, Jane Doe 3 observed an unknown male coming from the hallway into the living room area by the front door holding a banana-shaped knife in his right hand. As she started to walk into the living room the unknown male holding the knife told her to get back or he would stab her. He then started waving the knife in her direction. Jane Doe 3 described said individual as being approximately 5'6" to 5'8" in height, with a medium build, wearing what she thought was a black sweatshirt with a hood over his head. The second unknown male that she observed seemed big and tall. Said individual was approximately 5'09" to 6'0" in height, with a medium-to-heavy build, had short hair, and was wearing what she thought was a navy blue shirt. Jane Doe 3 did not see his face as he had his back to her and was standing in the hallway. The third unknown male seemed to be close to the same size as the unknown male holding the knife, but she did not get a good look at the third unknown male. At one point during the incident, one of the shorter unknown males exited the residence, grabbed some kind of gun, came back in, and then shot it. Jane Doe 3 did not get a good luck at the gun or what direction he shot it, but she heard it and it sounded like a gunshot. After the three unknown males left the residence through the front door, she saw Victim 1 stagger into the living room from the hallway and then he fell over near the chest in the living room. Jane Doe 3 observed what looked like a stab wound on Victim 1's back and chest area. At some point during the above incident, Jane Doe 3 told Jane Doe 1 to contact the police,

which she did. While Victim 1 was lying on the ground, Jane Doe 2 was holding Victim 1 in her arms. Jane Doe 2 was crying and kept saying something about Maynard. Shortly thereafter a family member (Hereinafter referenced as Jane Doe 5) showed up at the residence and was asking Jane Doe 2 questions about the three unknown males. Later, when Jane Doe 5 was interviewed by affiant and CI Joe concerning the questions she asked Jane Doe 2, Jane Doe 5 advised that she first asked Jane Doe 2 if she knew the three unknown males. She responded in the affirmative and then said it was three brothers, Maynard Shirley, Elijah Shirley, and Jane Doe 5 could not think of the third brother's name that Jane Doe 2 told her. Jane Doe 2 repeated multiple times that Maynard was the one who stabbed and killed Victim 1 and that said brothers drive a white BMW with 4 doors. Jane Doe 2 also told Jane Doe 5 that she had cheated on Elijah, who was her ex-boyfriend, by being with Victim 1. When Jane Doe 5 asked Jane Doe 2 who the mother of the three brothers was, Jane Doe 2 told Jane Doe 5 the name of their mother. Jane Doe 5 advised that she knows their mother.

13. In a subsequent interview with Jane Doe 1, she advised that she was sleeping in the bedroom with Jane Doe 3 when she heard fighting and yelling. Jane Doe 3 exited the bedroom and then shortly thereafter Jane Doe 1 went out to see what was going on. Jane Doe 1 heard Jane Doe 3 tell her (Jane Doe 1) to contact the police, which she did. Jane Doe 1 initially tried to call the Shiprock Police Department but was unsuccessful reaching anyone. Jane Doe 1 then called 911 Dispatch and reported said incident. While on the phone with dispatch, Jane Doe 1 saw several individuals fighting in the hallway. One of the individuals she observed near the hallway and front door was an unknown Native American Male, approximately 5'6" in height, with short hair on the sides and longer hair on top. Said individual was holding a knife in his right hand that was shaped like a banana and he was wearing a baggy hoody, tan or light brown in color, with his head exposed. Jane Doe 1 heard Jane Doe 3

telling the unknown male with the knife to leave and then she, Jane Doe 1, heard said unknown male tell Jane Doe 3 something to the effect of, "Get back lady or I'm going to stab you." At one point, Jane Doe 1 heard a loud popping noise that sounded like a toy gun. After the unknown males departed she came back out from the bedroom where she had been talking to 911 Dispatch and observed Victim 1 laying on the floor. When Jane Doe 1 checked Victim's 1 pulse the first time she thought she felt a pulse, but when she checked a second time she did not get a pulse. Jane Doe 1 also saw Victim 2 on the couch slouched over. He had a large open wound on his abdomen so she got him some towels and told him to keep pressure on it.

14. On March 21, 2015, in an effort to locate Maynard, Elijah and Michael, affiant and CI went and met with a female individual (Hereinafter referenced as Jane Doe 6) at her place of employment. Jane Doe 6 advised that said brothers were at their residence in Kirtland where she had just come from. Affiant and CI Joe asked Jane Doe 6 to go to their residence and tell them that affiant and CI Joe needed to speak with them about an incident that occurred in Fruitland during the early morning hours of March 21, 2015. Jane Doe 6 agreed and went to their residence to see if they were there. Once there, Jane Doe 6 noticed Maynard and Maynard's wife had completely cleaned out their room of their belongings and had left the house. Jane Doe 6 tried to locate Elijah at the house but he was not there either. The only brother that was at the house was Michael. Shortly thereafter, Michael telephonically called affiant. Affiant attempted to arrange an interview with Michael but he, Michael, advised it was his birthday and he did not want to be interviewed. Affiant told Michael it needed to be done, so Michael reluctantly agreed to do it at 3:00 p.m., at the Criminal Investigations Office in Shiprock, New Mexico, however, he said he would call first to confirm that he would be able to be there for sure. Affiant never received a telephone call from Michael, despite attempts from affiant to telephonically reach Michael.

The following day, March 22, 2015, affiant attempted multiple times to telephonically call Michael and Jane Doe 6, but without success. On March 23, 2015, Jane Doe 6 and family members of said brothers agreed to bring Michael to the Criminal Investigations Office in Shiprock at Noon for an interview with affiant and CI Joe, but the family members of Jane Doe 6 called later and said they had both Michael and Elijah with them and that they could bring them to the Criminal Investigations Office in Shiprock for a 3:00 p.m. interview. CI Joe agreed. As 3:00 p.m. neared, family members again called and said that Michael fled and they did not know his whereabouts, but that Elijah would come in. However, they asked to push the interview back to 4:00 p.m., as Elijah wanted to see his father first before coming in. Several minutes after 4:00 p.m., family members arrived with Elijah. Prior to the interview Jane Doe 6 hugged and held Elijah for several minutes. She was crying and had a hard time letting go of him.

15. Affiant and CI Joe attempted to interview Elijah, but he acted as if it was the first time he heard about the incident involving Victim 1. Elijah claimed he did not know anything about what affiant and CI Joe were talking about and then shortly thereafter, he invoked his Miranda rights and requested an attorney. After the interview, affiant and CI Joe spoke to Elijah's family members. They proceeded to tell affiant and CI Joe that Michael and Maynard were at a property belonging to family approximately 30 minutes outside of Farmington on the Navajo Nation Indian Reservation and that they refused to meet with law enforcement. They further told family that law enforcement could come and try and get them if they wanted. After some urging by the family to turn themselves in, Maynard and Michael started yelling at the family and getting angry with them. Family members who live at said property left the property for fear of their safety and the potential something bad could happen if law enforcement came and tried to arrest Michael and Maynard. Family members said that Michael, Maynard and a female

believed to be Maynard's wife were hiding out in the wash near said property and that their white BMW was also there. Family did not believe Michael and Maynard had guns, but said they did have knives.

16. On March 24, 2015, family members informed CI Joe that Michael and Maynard burned the white BMW at the aforementioned property and then contacted a female (Hereinafter referenced as Jane Doe 6) to come and get them and take them to a location somewhere in Newcomb, New Mexico. Subsequently, law enforcement went to said property and found the burned white BMW. Michael and Maynard were nowhere to be found.

17. According to various databases, to include the New Mexico Department of Motor Vehicles (DMV) and the Arizona DMV, Maynard Shirley is listed as 5'6" in one database, 5'08" in another, and then 5'09" in another database. His weight was consistently listed as 175 lbs. In the Arizona DMV photo of Maynard, which was issued on 02/11/2015, Maynard has short black hair on the sides and a little bit longer hair on top. Elijah Shirley is listed as 5'11" and 215 lbs. in one database, 5'11" and 255 lbs. in another, and then 5'11" and 250 lbs. in another database. During the interview of Elijah, he seemed to be approximately 6'0" in height and weighed more than 250 lbs. Michael Shirley is listed as 5'09" and 158 lbs. in one database, 5'09" and 175 lbs. in another, and then 5'11" and 172 lbs. in another database. Based on the above, said brothers closely fit the descriptions provided by the witnesses who were at the residence during the stabbing of Victim's 1 and 2.

18. Based on the aforementioned facts, your affiant respectfully submits that probable cause exists to charge Maynard Shirley, Elijah Shirley, and Michael Shirley, all of whom are enrolled members of the Navajo Nation, with violations of 18 U.S.C. §1153, unlawfully killing Victim 1 within the exterior boundaries of the Navajo Nation Indian Reservation, a violation

of 18 U.S.C. §1111, Murder for unlawfully killing Victim 1 with malice aforethought, 18 U.S.C. §2, Aiding and Abetting, and violations of 18 U.S.C. §§ 1153, 113(a)(6), and 2 for the assault resulting in serious bodily injury to Victim 2. I swear that this information is true and correct to the best of my knowledge and belief.

____
Cary Cahoon
Special Agent
Federal Bureau of Investigation

Subscribed and sworn before me on this 25th day of March 2015.

B. Paul Briones
United States Magistrate Judge